



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/371,769

08/10/1999

ERWIN HACKER

514413-3765

9638

20999 7590 10/01/2008
FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

10/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/371,769	Applicant(s) HACKER ET AL.	
	Examiner ALTON N. PRYOR	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-15,21-23,27,28,47-52,57,58 and 74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13,21,27,28,47,50,57,58 and 74 is/are rejected.
- 7) ☒ Claim(s) 14,15,22,23,48,49,51,52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments filed 6/30/08 have been fully considered but they are not persuasive. See argument below. Previous rejections/issues not discussed below have been withdrawn..

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13,21,27,28,47,50,57,58,74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruegg et al (US 6180563; 1/30/01).

Ruegg teaches a method for controlling weeds in crops including cotton comprising applying to the crop a composition comprising trifloxysulfuron plus at least one compound including glyphosate, glufosinate, sethoxydim, and clethodim. See abstract, column 1 line 5 – column 6 line 35, column 11 line 32 – column 12 line 21. Ruegg does not teach or suggest an explicit method or composition for controlling weed in cotton comprising applying to cotton a composition comprising glyphosate or glufosinate and metolachlor, pyrithiobac, sethoxydim, and/or clethodim. However, it would have been obvious to one having ordinary skill in the art to make instant invention comprising trifloxysulfuron plus glyphosate or glufosinate plus metolachlor, pyrithiobac, sethoxydim, and/or clethodim. One would have been motivated to do this because Ruegg suggests the combination of ingredients and the herbicidal effectiveness of the

Art Unit: 1616

combination would have been broaden as a result of the combination. Applicant provides unexpected results for the above combination of metolachlor or pyriithiobac plus glufosinate as shown on pages 31-35 of the specification. The invention comprising combinations of glufosinate plus metolachlor or pyriithiobac are allowable .

Response to Applicants' Argument

The Ruegg reference does not recognize a benefit outside of a combination with trifloxysulfuron and the Ruegg reference would not serve as a blue print for the instant invention. The Examiner argues that the instant invention employs "comprising" language, which allows the inclusion of trifloxysulfuron. While it is true that Ruegg does not serve as a blue print for anticipating the instant invention, Ruegg does make obvious the instant invention. Ruegg suggests in column 11 line 32 – column 12 line 21 the combination of trifloxysulfuron with at least one specified compound. Note that Ruegg specifically names the at least one compound which includes the instant compounds glufosinate, sethoxydim and clethodim. This teaching by Ruegg allows for trifloxysulfuron to be combined with compounds glufosinate, sethoxydim and/or clethodim. The combinations of ingredients are not resulting from a mere picking and choosing since the Ruegg specifically names the compounds, which can be combined trifloxysulfuron. In addition it is obvious to combine substances of the same utility with the expectation of obtaining at least an additive effect. Note that a prior art reference does not have to recite all the possible combinations of ingredients in order to make an invention obvious.

Ruegg names glufosinate , metolachlor, pyriithiobac, sethoxydim and clethodim, but only in the context of combination with a trifloxysulfuron. This is no indication that combination of these named herbicides with one another in the absence of trifluoxysulfuron would provide unexpected results against harmful plants. The Examiner's position remains that all named herbicides are well known; therefore, it would have been obvious to combine the named herbicides with the expectation of creating final combinations that would be herbicidal.

Applicants provide no unexpected results for the combination of known herbicide, bispyribac, sethoxydim or clethodim, with glufosinate(ammonium), which is also a known herbicide.

Claim Objection

Claims 14,15,22,23,48,49,51,52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim. The specification at pages 31-35 provides unexpected results for an invention comprising glufosinate plus metolachlor, or pyriithiobac.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 1616

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616

Application/Control Number: 09/371,769
Art Unit: 1616

Page 6